

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF HAWAII**

In re	)	Case No. 03-2804
	)	Chapter 11
PUMEHANA PARTNERS,	)	
	)	
Debtor.	)	Re: Docket No. 200 & 203
_____	)	

**MEMORANDUM DECISION ON  
APPLICATIONS BY GENERAL AND SPECIAL COUNSEL  
FOR INTERIM COMPENSATION**

This bankruptcy case is another chapter in the saga of a bitter dispute among four siblings, James Y. Marn (“James”), Alexander Y. Marn (“Alex”), Eric Y. Marn (“Eric”), and Beatrice Marn, as successor trustee of the Annabelle Y. Dunn Trust (“Beatrice”). So far, the dispute has led to at least eight civil actions in state court and two bankruptcy cases (including this one). Millions of dollars of professional fees have accrued. Each of the parties apparently would prefer to spend the entire family fortune on litigation expenses rather than share any of it with some of their siblings.

This chapter 11 case began when Alex and Eric filed an involuntary bankruptcy petition against Pumehana Partners, a general partnership in which each of the four siblings holds a twenty-five percent interest. Alex and Eric filed an involuntary petition because all partners in a general partnership must join in a voluntary petition for the partnership, 11 U.S.C. § 303(b)(3)(A), and James and

Beatrice were evidently unwilling to join. Later, however, James and Beatrice consented to the entry of an order for relief (Docket Nos. 5 and 13). The court entered the order on October 21, 2003 (Docket No. 17). Shortly thereafter, because it was painfully obvious that the disputes among the partners made it impossible for the partnership to operate effectively as a debtor in possession, the court directed the appointment of a chapter 11 trustee. (Docket No. 170.)

The attorneys whom the debtor in possession retained (with court approval) as general and special counsel have applied for interim compensation. (Docket No. 200 and 203.) Following a hearing on April 26, 2004, I took the matters under advisement.

Bank of Hawaii objects to the use of cash collateral in which it claims an interest to pay the fees and expenses of general and special counsel.<sup>1</sup> The court previously entered an order which authorized the debtor in possession to use the cash collateral for certain purposes, including the establishment of a reserve for professional fees in the amount of \$9,000. (Docket Nos. 222 and 233). Based upon the arguments made at the hearing, it is unclear whether the reserve was in fact established. Further, the reserve is to be shared among all of the professionals

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<sup>1</sup>James and certain other creditors joined in Bank of Hawaii's objection to general counsel's application. The joinders add nothing because the other creditors do not claim an interest in the cash collateral.

who are entitled to compensation for services rendered to the debtor in possession. Because the entitlement to compensation of all of the professionals has not yet been determined, no payment of interim compensation will be allowed at this time.

James objects to an allowance of fees for services rendered prior to the entry of the orders approving the retention of general and special counsel.<sup>2</sup> This issue has already been decided. Both of the motions seeking approval of the retentions requested *nunc pro tunc* approval as of the petition date. The written orders state that “The ‘Debtor’s Ex Parte Motion to Engage [Counsel] Nunc Pro Tunc’ is approved and granted [emphasis added].” James renews his argument that *nunc pro tunc* approval was not warranted. I have already addressed this argument and will not revisit it now.

James’ primary objection is that general and special counsel have taken direction from the debtor’s managing partner, Alex, rather than from James. James contends that Alex lacked authority to direct counsel’s work for the partnership, that counsel’s work in fact advanced Alex’s personal interests, rather

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<sup>2</sup>James’ written objection refers only to special counsel. At the hearing, James’ counsel said that the objection also applied to general counsel’s request. The court was forced to take the matter under advisement in part because James’ filings did not clearly include an objection to general counsel’s objection.

James’ objection also does not comply with the size limitations of LR 7.5. All counsel are admonished to comply with the rules in the future.

than that of the partnership, and that the debtor should not pay for work performed for Alex's benefit. James' allegations of Alex's misconduct are serious and the state court has sustained many of them. It does not necessarily follow, however, that counsel are responsible for any or all of that misconduct.

General counsel's work primarily consisted of putting the partnership into bankruptcy and taking the initial steps toward the administration of the case. James cannot fault general counsel for assisting in the commencement of the involuntary case, because he admitted the material allegations of the involuntary petition and consented to an order for relief. Once the partnership was in bankruptcy, it needed representation to carry out its duties as a debtor in possession. See LBR 9019-1(b). General counsel provided that representation and is entitled to reasonable compensation for his work. Three of the four partners, holding seventy five percent of the partnership interests, supported (at least tacitly) the actions taken by general counsel. Neither James nor any other party in interest has objected to the hourly rate, time entries, or expense items requested by general counsel. The fees and expenses requested are reasonable and comply with the requirements of 11 U.S.C. § 330 for purposes of an interim award of compensation (subject to review and adjustment when final compensation is considered).

Special counsel is in a somewhat different position. While the debtor

retained general counsel only a short while before the involuntary petition was filed, special counsel represented the debtor in the state court litigation for a considerable time before the petition date. James contends that, while representing the partnership in state court, special counsel in fact advanced Alex's interests to the detriment of the partnership and the other partners. It is neither necessary nor appropriate to resolve this dispute now. Special counsel has asserted a claim for unpaid prepetition legal fees; James' allegations of improper prepetition conduct are better addressed in the context of a claim objection or counterclaim. There is no indication that special counsel's services during the postpetition period were inconsistent with the debtor's interests.

James also objects to some of the specific time entries submitted by special counsel. (James does not object to the hourly rates charged by special counsel or to any expense reimbursement items.) James claims that: (a) certain of the time entries include several distinct tasks but do not itemize the time spent on each task, (b) certain of the time entries for meetings, telephone conferences, and other communications do not adequately describe the topics discussed, (c) some of the tasks were unnecessary or not within the scope of special counsel's limited retention or duplicative of work done by general counsel, (d) some of the services were not likely to benefit the estate, and (e) some of the time entries are excessive.

James is correct that the timesheets include a certain amount of “lumping,” contrary to this court’s compensation guidelines. Special counsel is admonished to avoid this problem in the future. I have carefully reviewed all of the timesheets, and I find and conclude that they are nonetheless sufficient to establish that the amount of time claimed is reasonable and consistent with the requirements of section 330 for purposes of an interim award of compensation (subject to review and adjustment when final compensation is considered).

Therefore, I will enter a separate order allowing interim compensation to general and special counsel in the amounts requested but withholding payment pending further order from this court.

DATED: Honolulu, Hawaii, May 3, 2004.

 */s/ Robert J. Faris*  
**United States Bankruptcy Judge**